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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Porta-Phone Comments
PR Docket No. 93-35, RM-7986

Dear Ms. Searcy:

Transmitted herewith, on behalf of Porta-Phone, please find enclosed the original and five (5) copies of its Comments in the above-referenced Rulemaking proceedings.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,


Frederick M. Joyce

FMJ/jml
Enc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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SUMMARY OF COMMENTS

Porta-Phone is a privately-held PCP licensee operating out of Tallahassee, Florida, and providing service throughout Florida, Georgia and Alabama. Porta-Phone supports the Commission's plan to allow earned exclusivity to PCP licensees. However, Porta-Phone is concerned that restricting exclusivity to the 929 MHz PCP band would create a harmful imbalance in a heretofore successful industry.

Porta-Phone submits that one uniform set of rules should be adopted to provide exclusivity in all PCP bands. Porta-Phone is concerned that exclusivity in only the 929 MHz band will force some lower-band operators to migrate, since capital investment may be more difficult to procure to expand systems in less-desirable, non-exclusive channels. At the same time, larger carriers are likely to successfully win many exclusive channels, leaving all other PCP licensees to "fight it out" on remaining shared channels. This would lead to further devaluation of carriers' investments and more degradation of PCP service due to harmful interference. Such a division between large and small carriers would also have an adverse effect on competition in the PCP industry.

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In the Matter of:)
)
Amendment of the Commission's) PR Docket No. 93-35
Rules to Provide Channel) RM-7986
Exclusivity to Qualified Private)
Paging Systems at 929-930 MHz)
)
To: The Commission

COMMENTS OF PORTA-PHONE

Porta-Phone, through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). Porta-Phone supports some of the rule modifications recommended in the Notice, and has some suggestions for eliminating or modifying others, for the following reasons:

I. Statement of Interest.

Porta-Phone is the Tallahassee, Florida-based licensee of Private Carrier Paging ("PCP") facilities, providing service throughout Florida, Georgia and Alabama in the 460 MHz band. Porta-Phone is a privately-owned business that competes against communications companies many times its size throughout its service areas. The rule changes proposed in the Commission's Notice, if adopted, will inevitably have an impact on Porta-Phone's PCP business. Moreover, due to its practical experience with this

radio service, Porta-Phone is well-qualified to comment on the advantages and disadvantages of the proposed rule changes, particularly from the "small" carrier's perspective. Thus, Porta-Phone has standing as a party in interest to file formal comments in this proceeding.

II. Summary of Notice.

The Notice proposes to allow PCP licensees in the 929-930 MHz band to earn channel exclusivity on thirty-five (35) of the forty (40) available PCP channels.¹ The Notice would also add a new Section 90.495 to the Commission's Rules, defining the requirements for exclusivity on a local, regional or nationwide basis, and a new Section 90.496, allowing an extended implementation, or "slow-growth" schedule for proposed systems of more than thirty (30) transmitters. Notice, Appendix A.

Porta-Phone supports the FCC's plan to allow a form of channel exclusivity for PCP licensees. At the same time, Porta-Phone submits that the FCC's proposal to limit these rule changes only to the 929-930 MHz band would create vast inequities in the PCP industry. Major differences in the FCC's regulatory treatment of various PCP operators could lead to a harmful imbalance and a difficult future for what has been, up to now, a highly successful industry. Porta-Phone's detailed comments in regard to these proposals follow.

¹ At present, 20 channels are for commercial PCP systems, 20 are non-commercial. See 47 C.F.R. § 90-494.

III. Background

Since the 929 MHz band was opened to PCP eleven years ago on a shared-use basis,² the PCP industry has been highly successful: technology has continued to improve while service costs have decreased. Most importantly, the availability of channels has led to a multitude of new businesses in large and small markets across the country; these entrepreneurs are operating not only on the 929 MHz band, but in the lower bands as well.

While Porta-Phone agrees with the Commission's statement that the paging marketplace has changed dramatically, it disagrees with the FCC's assumption that PCP channels below 900 MHz have become too congested to allow exclusive channel assignment. See Notice at ¶¶ 6, 39. Though many channels below 900 MHz have been licensed, there is no empirical evidence of the degree of congestion to which the Commission alludes in the Notice. Notice at ¶ 6.

If anything, the phenomenal growth of the PCP industry is testament to the resourcefulness of shared-use licenses in the 150 and 460 MHz bands. With a few unfortunate exceptions, these licensees, such as Porta-Phone, have cooperatively designed and coordinated their co-channel PCP systems to provide interference-free paging services to a ever-increasing number of pagers.

Ironically, the FCC's proposals, by establishing two vastly

epitomizes most PCP co-channel licensee relations. Porta-Phone submits that disparate rules for identical PCP services will inevitably lead to an uneven and inequitable "playing field" for certain PCP operators. On the other hand, by granting all PCP operators an equal right to exclusivity, and, by adopting rules that will encourage resolution of co-channel sharing disputes as they arise, the FCC will foster continued growth and high-quality service throughout the PCP spectrum.

**IV. The Proposed Amendments Would Cause Hardship
to Certain PCP Licensees**

The National Association of Business and Educational Radio's (NABER) Petition for Rule Making asserted that allowing exclusivity to PCP licensees would encourage lower-band licensees to migrate to available 900 MHz channels. NABER Petition at 8. While that unproven assumption could be correct, there would be substantial costs attendant to that migration; moreover, the FCC must consider the likely possibility of reverse migration of smaller carriers from the 900 MHz channels to the non-exclusive 150 and 460 MHz bands, and the attendant costs.

To protect their large capital investments and remain commercially viable, many lower-band operators would be forced to

more difficult and more expensive to obtain that backing for their shared-use operations, which could be perceived as "inferior" by investors, lenders, and customers.

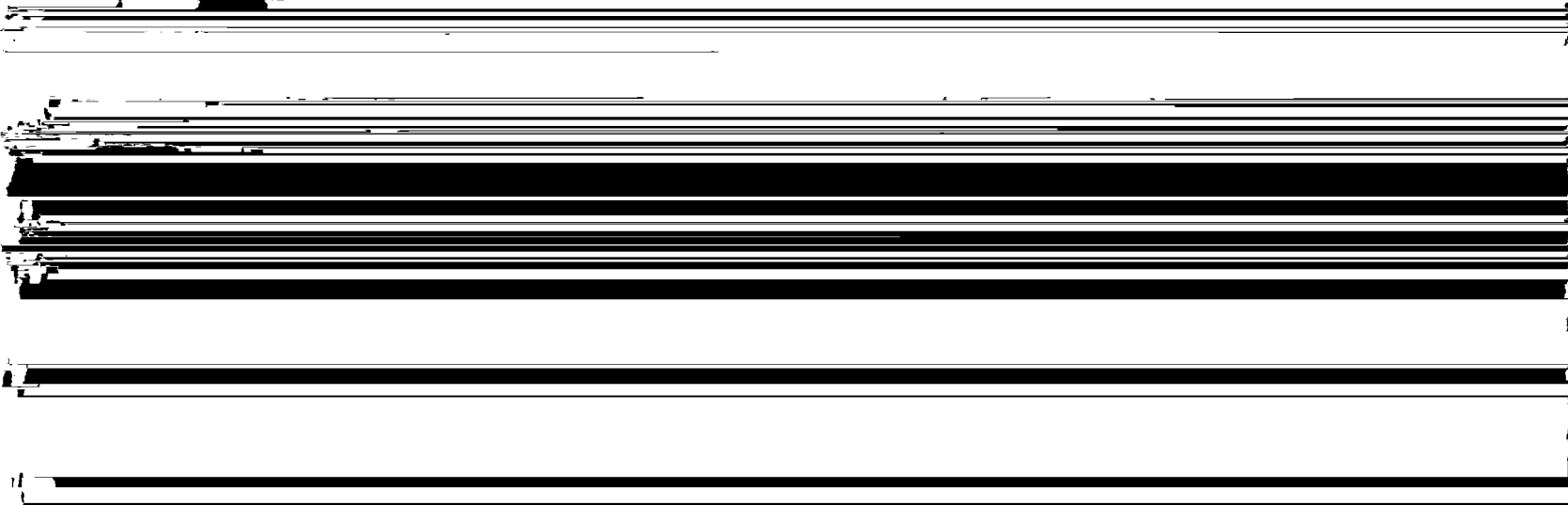
On the other side of this migration, the highly-desirable 900 MHz channels would quickly become unavailable due to the grant of exclusivity to existing licensees and large carriers able to more easily obtain the financing for a six-transmitter system. As 35 of the available 40 channels at 929 MHz became snatched up for exclusive use, new applicants would be forced to seek licenses on the increasingly congested lower band frequencies, increasing the likelihood of harmful interference to other licensees' operations and further devaluing their investments. Thus, exclusivity at 900 MHz would have the effect of degrading PCP service, and licensees' investments, in the lower frequency bands.

V. The Proposed Amendments Will Adversely Affect Competition.

multiple transmitters would discourage warehousing and speculation. Notice at ¶ 18. Porta-Phone agrees that speculation in the 929-930 MHz band is a significant concern, given the large number of applications for these channels in the last two or three years by large carriers. Still, Porta-Phone is concerned that the proposed minimum requirement of six transmitters in a given market area may not be enough to curb speculation and warehousing in the 900 MHz band.

Many large carriers have already constructed systems of 70 or more transmitters on 900 MHz channels. Due to technological advances such as the QT7995 transmitter (which can transmit simultaneously on four frequencies), many of these constructed systems could automatically qualify for exclusivity on more than one channel under the Commission's plan to provide immediate exclusivity to qualifying existing systems. Notice at ¶ 35. These channels could then be brought into service at the carrier's leisure.

The immediate loss of several channels in many markets once the proposed amendments to the Rules go into effect, would have a profound negative impact on smaller carriers. traditionally the



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two distinct groups -- large carriers with exclusive-use channels

this rulemaking proceeding to extend the exclusivity option to all PCP bands, making the majority of all available frequencies eligible for exclusive licensing. Only in this way can exclusivity be granted without benefitting one sector of the industry at the expense of another.

In the Notice, the Commission states that licensees that do not face the risk of other users on their channels "have greater incentive to invest in technology and to develop higher-capacity paging systems." Notice at ¶ 16. Porta-Phone submits that this is also true in the lower frequencies. Porta-Phone concurs with the Commission's statement that "[t]he purpose of granting exclusive channel rights is to prevent congestion before it occurs" (Notice at ¶ 17); there is no reason to deny non-900 MHz licensees the means by which they, too, could accomplish that goal.

Porta-Phone recognizes that lower-band licensees could become eligible for a form of exclusivity under the Exclusive Use Overlay ("EUO") provisions of the proposed rewrite of Part 90 of the Commission's Rules. See Notice of Proposed Rulemaking, PR Docket No. 92-235, 7 FCC Rcd. 8105 (1992) ("Refarming NPR"). The rules set forth in the subject Notice, however, would establish two radically different means of accomplishing exclusivity. Moreover, the pace of the subject rulemaking proceeding suggests that 900 MHz PCP exclusivity is on a much faster track than the Part 88 exclusivity proposals. That anomaly would exacerbate the likelihood of inequitable regulatory treatment of non-900 versus 900 MHz PCPs.

Under the Refarming NPR's EUO provisions, existing licensees on the 150-174 and 450-470 MHz bands could apply for "exclusive" use of their channels, meaning that no additional licenses would be granted on that frequency within 80 km (50 mi) of the licensee's base station. Refarming NPR, Exhibit D, § 88.179 et seq. Licensees would generally be required to obtain the consent of local co-channel licensees and meet loading requirements before they could receive an EUO license. Id. Obviously, that proposal differs markedly from the Nat'l Acad's proposal for 800 MHz



that exclusivity will create "a more stable, predictable environment for licensees" (Notice at ¶ 16), and that it should be implemented sooner, rather than later. Id. at ¶ 17. To nurture that environment and the future of the entire PCP industry, the exclusivity regulatory scheme should be uniform and equitable across the PCP spectrum.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Porta-Phone supports the proposal to allow exclusivity to PCP licensees, but asks the FCC to revise its proposal to adopt a uniform regulatory scheme that would allow exclusivity in all PCP bands under the same rule provisions.

Respectfully submitted,

PORTA-PHONE

By: 

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Date: May 6, 1993

CERTIFICATE OF SERVICE

I, Dennean Myers-Ferrell, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 6th day of May, 1993, copies of the foregoing Comments of Porta-Phone were mailed, postage prepaid, to the following:

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